SECT. XV.

Annualrenters;—Adjudgers;—Inhibiters;—Assignees, &c.

1665. *November* 11. TELFER *against* JAMIESON.

No 88.
It was decided, that when a bond is given blank in the creditor's name, an arrester should be preferred to any other person whose name should be filled up in the bond, unless intimated to the debtor before the arrestment.

PATRICK TELFER being cautioner to Samuel Veitch, and having arrested in the hands of Marjory Jamieson a certain sum due by her to the said Samuel, pursues for making furthcoming; and, having referred the verity thereof to her oath, the same was circumduced against her. The decreet being suspended, and she reponed, she depones, That in January 1663, she granted a bond to the said Samuel, blank in the creditor's name, containing the sum of 2069 merks principal, with annualrents and expenses, and that the most part thereof, the said bond, was resting; and also deponed, that she never heard, by intimation, or otherwise, before the arrestment, or since, that there was any name filled up in the samen; or that the sums therein contained belonged to any other person but the said Samuel; excepting only, that in May or June last, which was both after the arrestment and decreet following thereupon, Marion Geddes, whose name is now filled up in the bond, did serve inhibition against her thereupon; likeas, the said Marion compeared and produced the extract of the foresaid bond, bearing date of registration prior to the arrestment, and craved to be preferred to the said Patrick. That being a matter of great importance as to blank bonds, and falling out daily, and never hitherto decided; the LORDS were the more exact in it, and after a very great debate, found that the arrester ought to be preferred, and they did prefer him; and declared, that in all time coming, they would so decide, that when a bond was given blank in the creditor's name, the arrester should be preferred to any other person whose name should be filled up in the bond, unless the same filling up were intimate to the debtor before the arrestment. This is the first time that ever this was debated, *et bene judicatum.*

Newbyth, MS. p. 39.

No 89.
Two decrees of furthcoming being pronounced in the same day; the one arrestment being laid a day sooner than the other, was preferred.

1666. *February* 1. COLONEL CUNINGHAME *against* LYLL.

IN a competition between Colonel Cuninghame and Lyll, both being arresters, and having obtained decreets, to make furthcoming in one day; and Colonel Cuninghame's arrestment being a day prior; he *alleged* he ought to be preferred, because his diligence was anterior, and his decreet behoved to be drawn back to his arrestment. It was *answered* for Lyll, That it was only the decreet to

No 89.

make furthcoming, that constitute the right; and the arrestment was but a judicial prohibition, hindering the debtor to dispone, like an inhibition; or a denunciation of lands to be apprised, and that the last denunciation, and first apprising would be preferred: So the decreet to make furthcoming is the judicial assignation of the debt, and both being in one day, ought to come in together. It was *answered*, That in legal diligences, *prior tempore est potior jure*, and the decreet to make furthcoming is declaratory, finding the sum arrested to belong to the arrester, by virtue of the arrestment; and, as for the instance of apprisings, the first denunciation can never be postponed, unless the diligence be defective; for, if the first denouncer take as few days to the time of the apprising as the other, he will still be preferred.

THE LORDS preferred the first arrester, being equal in diligence with the second. *See* ARRESTMENT.

Stair, *v.* 1. *p.* 346.

1674. *February* 10. BLYTH *against* The CREDITORS of DAIRSAY.

No 90.
In a competition of apprisings, the sums upon which one apprising proceeded, were contracted partly before and partly after inhibition. It was argued, that the sums anterior were satisfied by intromission within the legal.—Found that intromission was to be ascribed to the first apprising, which alone carried the property; and this not with regard only to the sums anterior to the inhibition.

IN a competition among the creditors of Sir George Morison of Dairsay, Mr Henry Blyth having right to a sum, whereupon inhibition was used against Sir John Spottiswood of Dairsay, before he disponed the estate to Sir George Morison, did thereupon pursue reduction of two apprisings led against Sir John Spottiswood, whereunto Sir George Morison had taken right for his better security, when he bought the lands, and satisfied them with a part of the price, and obliged himself to make no other use thereof, but for his security. The reason of reduction was, because the sums whereupon the apprisings proceeded, were contracted after the inhibition. It was *answered*, That in both the apprisings there were sums anterior to the inhibition, and some posterior. It was *replied*, That the sums anterior were satisfied by the appriser's intromission within the legal, viz. 'either within the first seven years, or within the time by which the 'legals of apprisings not expired anno 1652, were prorogate for three years.' It was *duplied*, 1mo, That it was not relevant to allege, that the whole intromission should be ascribed to the sums anterior to the inhibition, but behoved to be ascribed to the whole sums *pro rata*; not only as to the sums in one apprising, but both the apprisings being acquired at one time for the buyer's security, the intromission behoved to be ascribed to both; and, albeit there be a prorogation of the legal, giving three years to debtors to redeem; it bears nothing of intromission *medio tempore*, much less can it extend to intromission had, after the legal was expired, according to the law then standing, and before the act of Parliament prorogating the legal; during which time, the appriser did not possess for satisfaction, but *proprio jure suo*, and so as *bonæ fidei* possessor, *fecit fructus consumptos suos*.